

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

EDWARD E. TERRELL, SR.,

Plaintiff,

v.

CASE NO. 17-3038-SAC-DJW

SEDGWICK COUNTY,

Defendant.

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's response (Doc. #10), which the Court liberally construes as a motion to alter or amend judgment. By an order entered on April 17, 2017, the Court liberally construed this matter as a petition for habeas corpus challenging petitioner's conviction in Case No. 2002-CR-1700, and directed plaintiff to show cause why the matter should not be dismissed as untimely. Plaintiff did not respond within the time allowed, and the Court dismissed the action on May 16, 2017.

Plaintiff's response states that he received copies of the case records ten years ago (Doc. #10, p. 1), and the case records attached show that plaintiff completed his term of probation in the 2002 case in January 2006 (*id.*, pp. 6-7).

"The federal habeas statute gives the United States district courts jurisdiction to entertain petitions for habeas relief only from persons who are 'in custody in violation of the Constitution or laws or treaties of the United States.'" *Maleng v. Cook*, 490 U.S. 488, 490 (1989) (quoting 28 U.S.C. § 2241(c)(3) and citing 28 U.S.C. § 2254(a)). A petitioner is not "in custody" under a conviction after the sentence imposed for it has fully expired at the time the petition is filed.

Id. at 491.

Because plaintiff did not seek habeas corpus review within the one-year limitation period established in 28 U.S.C. § 2244(d)(1), and because his sentence in Case No. 2002-CR-1700 is fully expired, he may not now seek such relief.

IT IS, THEREFORE, BY THE COURT ORDERED plaintiff's response (Doc. #10 is liberally construed as a motion to alter or amend the judgment and is denied.

IT IS FURTHER ORDERED the provisional grant of in forma pauperis is modified to grant in forma pauperis. Because this matter is construed as a petition for habeas corpus, no fee is assessed.

IT IS SO ORDERED.

DATED: This 21st day of June, 2017, at Topeka, Kansas.

S/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge